IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL NO. 26 OF 2007
WITH
CIVIL APPLICATION NO. 55 OF 2007

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any Order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SAFFRON CERAMICS PVT. LTD. - Appellant
Versus
HINDUSTAN PETROLEUM CORPORATION LTD. - Opponent

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Appearance :
MR DIPAK R DAVE for the Appellant.
MS MINOO A SHAH for the Opponent.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 02/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. Heard learned Counsel Shri Dipak R. Dave for the appellant – Company, Ms. Minoo Shah for the respondent – Corporation and Ms. Dharmistha Raval for Shell Gas (LPG) India Pvt. Ltd, who had appeared before the learned Company Jude on behalf of Shell Gas (LPG) India Pvt. Ltd at the time of Final Hearing of the Company Petition No. 5 of 2006, whereby the learned Company Judge ordered winding up of the present appellant-Company and also ordered the Official Liquidator attached with the Court, as Official Liquidator of the Company, to take possession of the property (movable and immovable) of the Company along with its bank accounts, cash and accounts books etc and directed the Official Liquidator to submit his report within a period of three months from the date of order.

2. Last time i.e. on 14th February, 2007, when this appeal was placed before this Court, two out of three Directors were present before the Court through

their learned Counsel Shri Dave. They had shown their willingness to pay up the dues of the respondent-Corporation in installments within reasonable time. 15 days' time was sought for giving draft of Rs. 1 Lakh to the respondent – Corporation. They have also stated that if the other side comes on notice, then they will sit across the table and decide the installments of the amount. Only because of that, this Court had issued notice in the matter. Accordingly, not only the respondent – Corporation has remained present through its learned Counsel Ms. Minoo Shah, but Shell Gas (LPG) India Pvt. Ltd also remained present through its learned Counsel Ms. Dharmistha Raval.

3. As per the statement made before this Court on February 14, 2007, the appellant – Company has come with Pay Order of Rs. 1 Lakh and offered the other side that they will pay the entire dues in equal installments within reasonable period of one year. However, this proposal was not accepted to both the respondents, the respondent - Corporation as well as Shell Gas (LPG) India Pvt. Ltd. According

to them, that very offer was made before the learned Company Judge and it was not acceptable to them, as in the past, the appellant-Company issued advance cheques which bounced back for which Criminal Complaint under Section 138 of the Negotiable Instruments Act was also filed. Thus, it is not possible for the parties to settle the matter. Therefore, this Court is required to decided the appeal on merits.

4. Having heard the learned Counsel for the parties and having carefully gone through the judgment and order passed by the learned Company Judge which is challenged in this appeal, it is clear that, when the matter was pending before the learned Company Judge, the matter was fully heard on November 20, 2006 and the Court passed an order. However, on the request of Shri Dave for the Company, the matter was kept on December 14, 2006 with a view to come up with some reasonable proposal and to make some payments to show their *bona fide.* However, on the next date of hearing i.e. on December 14, 2006, when the matter was placed was placed before the learned

Company Judge, the Company had neither come out with any reasonable proposal nor made payment to show their *bona fide*. In fact, Shri Dave frankly conceded before the learned Company Judge that it was not possible for the Company to pay any amount to the petitioner.

Under the circumstances, the learned Company Judge had no option but to pass the order and accordingly, on merits, the learned Company Judge was convinced that the respondent – Company was not in a position to pay its dues to the creditors and lost its financial substratum and, therefore, winding up order was required to be passed and accordingly, it was passed under the provisions of the Companies Act.

5. In view of the above clear cut finding recorded by the learned Company Judge, there is no question of entertaining this appeal as the appellant – Company is not in a position to pay its dues to the creditors.

6. In view of the above discussion, this appeal

fails and is hereby summarily dismissed.

CIVIL APPLICATION NO. 55 OF 2007

As the appeal is dismissed, this Civil Application is also dismissed. Interim relief granted earlier stands vacated. Rule discharged.

[B. J. SHETHNA, J.]

[H. B. ANTANI, J.]

/shamnath